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6 **UNITED STATES DISTRICT COURT**
7 **WESTERN DISTRICT OF WASHINGTON**

8 FEDERAL TRADE COMMISSION, STATE OF
9 NEW YORK, STATE OF CONNECTICUT,
10 COMMONWEALTH OF PENNSYLVANIA,
11 STATE OF DELAWARE, STATE OF MAINE,
12 STATE OF MARYLAND, COMMONWEALTH
13 OF MASSACHUSETTS, STATE OF
14 MICHIGAN, STATE OF MINNESOTA, STATE
15 OF NEVADA, STATE OF NEW HAMPSHIRE,
16 STATE OF NEW JERSEY, STATE OF NEW
17 MEXICO, STATE OF RHODE ISLAND, *and*
18 STATE OF WISCONSIN,

14 *Plaintiffs,*

15 v.

16 AMAZON.COM, INC.,

17 *Defendant.*

Case No. 2:23-cv-01495

**PLAINTIFF STATES' MOTION FOR
LEAVE TO APPEAR *PRO HAC VICE*
WITHOUT ASSOCIATION WITH
LOCAL COUNSEL WITH AN
OFFICE WITHIN THE DISTRICT**

NOTE ON MOTION CALENDAR:
Friday, October 20, 2023

19 1. Pursuant to Local Civil Rule ("LCR") 83.1(d)(2), Plaintiff States New York,
20 Connecticut, Pennsylvania, Delaware, Maine, Maryland, Massachusetts, Michigan, Minnesota,
21 Nevada, New Hampshire, New Jersey, New Mexico, Oklahoma, Oregon, Rhode Island, and
22 Wisconsin ("Plaintiff States"), and their attorneys, collectively move for leave to be permitted to
23 seek *pro hac vice* admission without association with local counsel. If the motion is granted,

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1 Plaintiff States will file applications for leave to appear *pro hac vice* pursuant to LCR 83.1(d)(1)
2 and will ensure that all filings comply with all local rules of this Court.

3 2. In the alternative, Plaintiff States seek to associate with Timothy D. Smith, Senior
4 Assistant Attorney General at the Oregon Department of Justice and counsel for the Plaintiff
5 State of Oregon, as local counsel. Mr. Smith is a member of the bar of the Western District of
6 Washington but does not maintain an office within the geographic bounds of the District.¹

7 3. Due to the highly confidential nature of both the complaint itself and the timing of
8 the filing of the complaint, Plaintiff States did not secure local counsel prior to the filing of the
9 complaint.

10 4. Plaintiff States have conferred with Defendant on this matter, and Defendant takes
11 no position.

12 5. Plaintiff Federal Trade Commission (“FTC”) assents to Plaintiff States’ requested
13 relief.

14 **BACKGROUND**

15 6. On September 26, 2023, Plaintiff States, in conjunction with Plaintiff FTC, filed a
16 complaint petitioning the Court pursuant to 15 U.S.C. § 53(b), 15 U.S.C. § 26, and applicable
17 state laws to enter permanent injunctions and other equitable relief against Defendant to undo
18 and prevent its unlawful conduct in or affecting commerce in violation of numerous federal and
19 state competition and consumer protection laws.

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23 ¹ A third alternative would be to grant counsel for Plaintiff States leave to file a Petition for Conditional Admission,
24 analogous to the process set forth in LCR 83.1(c)(2). Counsel for our federal enforcer co-Plaintiff, the Federal Trade
Commission, are admitted pursuant to LCR83.1(c)(2), which provides for conditional admission to the bar of this
Court for attorneys employed by the United States or one of its agencies.

ARGUMENT

7. LCR 83.1(d)(1) states that “[a]ny member in good standing of the bar of any court of the United States, or of the highest court of any state, or of any organized territory of the United States, and who neither resides nor maintains an office for the practice of law in the Western District of Washington normally will be permitted upon application and upon a showing of particular need to appear and participate in a particular case *pro hac vice*. The party must also be represented by local counsel[.]” LCR 83.1(d)(1).

8. Plaintiff States respectfully request that, pursuant to LCR 83.1(d)(2), the Court waive the requirement that they obtain and associate with local counsel by allowing attorneys for Plaintiff States to seek *pro hac vice* admission without association with local counsel. Good cause justifies this limited request.

9. In the alternative, Plaintiff States respectfully request that they be permitted to associate with Timothy D. Smith, Senior Assistant Attorney General at the Oregon Department of Justice and counsel for Plaintiff State of Oregon, as local counsel. Mr. Smith is a member of the bar of the Western District of Washington but does not maintain an office within the bounds of the Western District.

10. Plaintiff States do not believe the requested relief would undermine the purpose of the LCR’s local counsel requirement. LCR 83.1(d)(2) provides, *inter alia*, that local counsel must “ensure that all filings comply with all local rules of this court,” and must “remind *pro hac vice* counsel of the court’s commitment to maintaining a high degree of professionalism and civility from the lawyers practicing before this court[.]” LCR 83.1(d)(2).

11. Plaintiff States and their counsel, attorneys from the Offices of the Attorneys General of seventeen states and commonwealths, represent and commit to the Court that that they will uphold these standards.

1 12. This is a narrow, case-specific request. In the context of this litigation – a case
2 brought by a coalition of federal and state governmental antitrust enforcers – Plaintiff States
3 believe that waiver of the local counsel requirement for *pro hac vice* admission is warranted.
4 Plaintiff States’ counsel are experienced litigators and trial counsel, and will work with Plaintiff
5 FTC, which will coordinate and lead this litigation with its experienced trial counsel, and whose
6 attorneys have been conditionally admitted to the bar of this Court pursuant to LCR 83.1(c)(2).

7 13. If Plaintiff States’ request is granted, all attorneys for Plaintiff States will file
8 applications for leave to appear *pro hac vice* before the Court, pursuant to LCR 83.1(d)(1); those
9 applications require the applicant to attest that he or she is “charged with knowing and
10 complying with all applicable local rules,” and that he or she is a member in good standing of the
11 bar of another jurisdiction and has not been censured or disbarred. LCR 83.1(d)(1). Counsel for
12 Plaintiff States will further designate an attorney who is familiar with the case to appear on
13 behalf of the Plaintiff States at all proceedings before this Court.

14 14. If Plaintiff States’ request is granted, Plaintiff States’ counsel will register as
15 filing users with the Court’s CM/ECF system, thereby ensuring receipt of electronic notice of all
16 docket entries. To the extent there is additional need for coordination of, or communication to,
17 Plaintiff States, Plaintiff States can designate lead counsel for all Plaintiff States.

18 15. Counsel for Plaintiff States are fully familiar with the Federal Rules of Civil
19 Procedure, have taken the necessary time to familiarize themselves with local procedural rules,
20 and will seek procedural and substantive advice from attorneys admitted in this Court where
21 appropriate. They are in good standing in all jurisdictions in which they are admitted, submit
22 themselves to the Court’s jurisdiction and control, and pledge to demonstrate the judicious and
23 careful practice that the Court properly expects.

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1 16. Plaintiff States are resource-constrained public entities. Retention of local counsel
2 solely for Plaintiff States would create a financial burden not shared by our FTC co-Plaintiff,
3 whose counsel have available to them the Conditional Admission procedure, and potentially
4 implicates procurement rules, laws, regulations, and processes of each Plaintiff State.

5 17. Moreover, by virtue of the size of Defendant's business in the Western District of
6 Washington, Plaintiff States believe that it will be challenging to identify local counsel who will
7 not be conflicted, and will have the type of experience suitable for this matter. Plaintiff States
8 have made significant efforts to identify candidates to serve as local counsel and have already
9 encountered this roadblock.

10 18. Further complicating the matter, it appears that Defendant will not agree to waive
11 conflicts for attorneys whom Plaintiff States are considering retaining as local counsel; Plaintiff
12 States have had one candidate local counsel request a conflict waiver from Defendant in
13 connection with a waivable conflict arising from her law firm partner's representation of
14 Defendant in an unrelated matter, and Defendant declined to waive the conflict.

15 19. Given Plaintiff States' commitment to upholding the high practice standards of
16 this Court, and in light of the unique challenges faced by Plaintiff States in retaining local
17 counsel, waiver of the local counsel requirement is appropriate. The circumstances surrounding
18 this motion, and the relief requested, are nearly identical to those relevant to a similar request
19 filed in another joint FTC-State litigation. There, the state plaintiffs sought leave to appear
20 without local counsel, and the court granted their request. *See Fed. Trade Comm'n et al. v.*
21 *Syngenta et al.*, No. 22-cv-828 (M.D.N.C. Oct. 17, 2022), ECF No. 26.

22 20. In the event that the Court does not grant Plaintiff States' request for waiver of the
23 local counsel requirement, Plaintiff States request in the alternative that they be allowed to
24 associate with Timothy D. Smith, Senior Assistant Attorney General at the Oregon Department

1 of Justice, counsel for Plaintiff State of Oregon, and a member of the bar of this Court, as local
2 counsel. Although Mr. Smith does not maintain an office within the geographical bounds of the
3 Western District of Washington pursuant to the requirements of LCR 83.1(d)(2), Plaintiff States
4 believe that Mr. Smith can competently serve as our collective local counsel.

5 **CONCLUSION**

6 21. For the reasons set forth above, Plaintiff States request that the Court permit
7 Plaintiff States to either a) have their attorneys seek *pro hac vice* admission without association
8 with local counsel; or, alternatively, to b) designate Timothy D. Smith as local counsel. A
9 proposed form of Order is submitted with this application.

10 Dated: October 10, 2023

11 Respectfully submitted,

12
13 /s/ Timothy D. Smith
14 TIMOTHY D. SMITH (WSBA # 44583)
15 Antitrust and False Claims Unit
16 Oregon Department of Justice
17 100 SW Market St, Portland OR 97201
18 Telephone: (971) 673-3885
19 Email: tim.smith@doj.state.or.us

20 *Attorney for Plaintiff State of Oregon and on behalf*
21 *of all Plaintiff States*

22
23 I certify that this memorandum contains
24 1,348 words, in compliance with the Local Civil
Rules.

CERTIFICATE OF SERVICE

I hereby certify that on October 10, 2023, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system and have verified that such filing was sent electronically using the CM/ECF system.

/s/ Timothy D. Smith

TIMOTHY D. SMITH (WSBA # 44583)

Antitrust and False Claims Unit

Oregon Department of Justice

100 SW Market St, Portland OR 97201

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*Attorney for Plaintiff State of Oregon and on behalf
of all Plaintiff States*

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18 STATE OF WISCONSIN,

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15 v.

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17 *Defendant.*

Case No. 2:23-cv-01495

**[PROPOSED] ORDER GRANTING
PLAINTIFF STATES' MOTION FOR
LEAVE TO APPEAR *PRO HAC VICE*
WITHOUT ASSOCIATION WITH
LOCAL COUNSEL WITH AN
OFFICE WITHIN THE DISTRICT**

19 Upon consideration of Plaintiff States' Motion For Leave To Appear *Pro Hac Vice*
20 Without Association With Local Counsel With An Office Within The District, it is hereby
21 ORDERED that the Motion is GRANTED and it is further ORDERED that attorneys for
22 Plaintiff States are permitted to take any of the actions bearing a checkmark below:

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- ☐ seek *pro hac vice* admission without association with local counsel;
- ☐ designate Timothy D. Smith, Senior Assistant Attorney General at the Oregon Department of Justice and counsel for the Plaintiff State of Oregon, as local counsel;
- ☐ file Petitions for Conditional Admission to Practice.

SO ORDERED.

Dated this 10th day of October, 2023.

UNITED STATES DISTRICT JUDGE

Presented by:

/s/ Timothy D. Smith
TIMOTHY D. SMITH (WSBA # 44583)
Antitrust and False Claims Unit
Oregon Department of Justice
100 SW Market St, Portland OR 97201
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Attorney for Plaintiff State of Oregon and on behalf of all Plaintiff States